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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056168
Party	Plaintiff Legend Pictures LLC
Correspondence Address	CARLA CALCAGNO CALCAGNO LAW PLLC 2300 M ST NW, SUITE 800 WASHINGTON, DC 20037 UNITED STATES Carla.calcagno@calcagnolaw.com
Submission	Reply in Support of Motion
Filer's Name	Carla C. Calcagno
Filer's e-mail	cccalcagno@gmail.com
Signature	/Carla C. Calcagno/
Date	06/26/2013
Attachments	Legend's Reply in support of its Motion to Compel.pdf(49293 bytes) Exhibit 1 to Petitioner's Reply in Further Support of Motion to Compel.pdf(71008 bytes) Legend's Exhibit 2 in further support of its Motion to Compel.pdf(85897 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LEGEND PICTURES, LLC,	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92056168
	)	
QUENTIN DAVIS,	)	
	)	
Defendant	)	

PETITIONER'S REPLY IN FURTHER SUPPORT OF ITS MOTION TO COMPEL

On March 14, 2013 – and fully two and one half months before the close of discovery - Petitioner timely served its First and Second Set of Interrogatories and First Set of Production Requests on Defendant.

This discovery was appropriate. In its Brief in support of its Motion to Compel, Petitioner cited and attached copies of directly apt precedent. This precedent unequivocally validates Petitioner's interrogatories as within the presumptive limits of Trademark Rule 2.12.0(d)(1) and invalidates Defendant's refusal to answer any of Petitioner's discovery requests.

Rather than addressing the cases attached to Petitioner's brief or reflecting on how his behavior is justified under those rules, Defendant attempts to divert the Board, by engaging in false and in any event immaterial accusations about Petitioner.

Petitioner respectfully directs the Board's attention to the undisputed and material facts and issues here. Defendant failed, refused, and willfully continues to refuse to respond to Petitioner's timely and appropriate discovery, despite being aware of precedent to the contrary.

Therefore, Petitioner respectfully submits that under precedent the Board must order Defendant to do the following within thirty days of the Board's order:

1. Answer Petitioner's First and Second Set of Interrogatories;

2. Answer Petitioner's First Set of Production Request Nos. 1, 6(b) 8-11, 30 and 40-42; and

3. Answer Petitioner's First Set of Production Request Nos. 2, 3, 4, 5, 6(a), 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 32, 33, 34, 35, 36, 37, 38, and 39, without objection.

Further, as Defendant's failure to respond appropriately deprived Petitioner of the right to follow up discovery, consistent with a long line of precedent, Petitioner respectfully requests that the Board reopen discovery for sixty days solely for Petitioner's benefit.

ARGUMENT

There are four issues before the Board.

First, whether Defendant improperly failed and refused to answer Petitioner's First Set of Production Request Nos. 2, 3, 4, 5, 6(a), 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 32, 33, 34, 35, 36, 37, 38, and 39. The answer to this question is yes. Unequivocally, Defendant failed to answer or object to these productions requests in any manner provided for under the rules. This fact is undisputed. Therefore, the Board must order Defendant to answer these production requests.

The second issue is whether Defendant has demonstrated any excusable neglect for failing to answer these requests in the time and manner permitted under the rules. The answer to this question is no. Defendant fails to cite any rule or other authority that would justify his refusing to respond to these production requests when due on April 14, 2013. Further, his

continuing refusal to do so now can only be characterized as willful. Despite the clear precedent cited earlier in Petitioner's good faith letters and its brief, Defendant still refuses to answer Petitioner's First Set of Production Request Nos. 2, 3, 4, 5, 6(a), 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 32, 33, 34, 35, 36, 37, 38, and 39. Further, one searches his brief in vain for any reason, authority, or justification for his failure to do so. Therefore, pursuant to the authority cited in Petitioner's opening brief, the Board must order Defendant to answer these production requests without objection.

The third issue is whether Petitioner's First and Second Set of Interrogatories exceeded seventy-five in number. In support of its motion, Petitioner cited and attached copies of precedent unequivocally showing that Defendant's objections were spurious.

Rather than addressing these cases however or showing how that precedent may be distinguished, Defendant simply ignores it. Instead, he continues to argue that requests seeking information as to each product either "promoted, offered, or sold" count as more than one interrogatory, despite lacking any cases to support this position and despite the cases attached to Petitioner's brief nullifying his position. In short, as he acted during Petitioner's good faith attempts to resolve the dispute, Defendant simply ignores any precedent that does not support his position.

This is not a case where an ignorant pro se simply fails to understand precedent. Defendant has been given the precedent and has the means to read it. If he were acting in good faith, and had the information sought in Petitioner's discovery requests, he should now have produced it. Further, Defendant attempts to divert the Board's attention from the law of the case

and the facts by engaging in largely irrelevant[1] and inaccurate finger pointing.[2] As Petitioner's interrogatories fully comply with the rule, the Board must order Defendant to answer Petitioner's First and Second Set of Interrogatories and Production Request Nos. 1, 6(b) 8-11, 30 and 40-42.

Fourth, the issue is whether Discovery should be reopened solely for Petitioner's benefit. Again, the cases cited in Petitioner's opening brief are clear and consistent. Where, as here, a party's failure to respond or failure to respond appropriately to discovery deprives its adverse party of follow–up, the Board routinely reopens the discovery period solely for the propounding party's benefit to place that party in the position it would have been in had discovery been answered in an appropriate and timely fashion.

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[1]. While it is wholly irrelevant to the issues here, Petitioner cannot leave the suggestion in the record that Petitioner has not cooperated in discovery. Contrary to Defendant's allegations, Petitioner has fully answered Defendant's discovery. Defendant is concealing the fact that Petitioner answered each of Defendant's questions completely with a true minimum of objections. Defendant questioned only one objection, that certain of Defendant' discovery requests were vague. Based on a stipulation of terms, Petitioner withdrew the objection. See email attached as Exhibit 1.

[2] Defendant's argument that Petitioner changed its count of the Interrogatories is wholly inaccurate. To the extent that this the argument is understood, Defendant is confusing the numbering system set out on the initial interrogatories for the undersigned's count of the interrogatories pursuant to the TTAB rules, which the undersigned provided to Defendant in its May 2, 2013 letter to resolve the issues relating to this motion.

In this regard, and while Petitioner will not address each and every mischaracterization in Defendant's reply brief as to Petitioner's actions, the Board should note the following.

Petitioner acted entirely timely and appropriately in initiating discovery and attempting to resolve the dispute. Defendant's timeline excludes that Petitioner hired new counsel on March 7, 2013. Discovery was served within seven days of that appointment on March 14, 2012. Further, this discovery was served fully two and one half months prior to the close of discovery. If Defendant had responded as required under the rules, Petitioner would have had approximately one and one half months remaining in discovery to take follow up.

Further, Petitioner acted with the utmost courtesy to Defendant. Petitioner contacted Defendant on April 3, 2013 to set a time to speak to see if Mr. Davis had any questions regarding its discovery, not just to discuss whether Defendant had received Petitioner's discovery requests, as Defendant alleges. See Exhibit 2 to Petitioner's Reply Brief. The parties held this conference on April 10, 2013. In that conference, as set forth in Petitioner's moving papers, Petitioner and Defendant discussed the discovery requests and the procedure for responding to those requests, exactly as set forth in Petitioner's opening brief,

Despite these attempts to streamline discovery, on Sunday, April 14, 2013, Defendant served his objection to Petitioner's interrogatories, and no response to Petitioner's production requests. Within two business weeks after receiving this spurious objection, on April 29, 2013, Petitioner served its first notice of discovery deficiency. This was both timely and appropriate. Further, even at that date, if Defendant had responded to Petitioner's letter appropriately by answering discovery, Petitioner would have had approximately one month remaining in discovery. As the record shows, Petitioner responded within two business days of each of Defendant's subsequent letters. When Defendant failed to respond to Petitioner's May 7, 2013

email, and failed to produce its promised documents, Petitioner was forced to expend numerous hours and resources drafting and filing its Motion to Compel Discovery.

While Petitioner acted entirely timely and appropriately in initiating discovery and attempting to resolve the dispute, Defendant has done the exact opposite. Defendant has refused to answer any of Petitioner's interrogatories, any of petitioner's production requests, and has continued to do so despite being shown clear precedent reflecting that his refusal to answer discovery was inappropriate. Further, as the record shows, despite the statement in his timeline, Defendant never "offered resolution" to the discovery dispute other than asking Petitioner to simply waive its right to answers to its entirely appropriate interrogatories and follow up discovery.

CONCLUSION

Thus, for the foregoing reasons, Petitioner's Motion to Compel and for an Order Re-opening Discovery Should be Granted, since doing so is consistent with settled law, since the request is timely, since not doing so will irreversibly prejudice the rights of the Petitioner to necessary and timely discovery, and since justice so requires.

Respectfully submitted,

Legend Pictures, LLC

Date June 26, 2013

By__ */Carla C. Calcagno/*___
Carla C. Calcagno, Esq.
Janet G. Ricciuti, Esq.
Calcagno Law PLLC
2300 M Street, N.W.
Suite 800

Washington, DC 20037
Telephone: (202) 973-2880
Attorneys for Legend Pictures, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 26, 2013 a true and accurate copy of the foregoing:

PETITIONER'S REPLY IN FURTHER SUPPORT OF ITS MOTION TO COMPEL

was served by agreement of the parties on Defendant by emailing a copy of the same to nevisbaby@hotmail.com and tharilest@yahoo.com.

/Carla Calcagno/

Carla Calcagno

From: Carla Calcagno <carla.calcagno@calcagnolaw.com>
Sent: Friday, June 14, 2013 3:14 PM
To: nevisbaby@hotmail.com; tharilest@yahoo.com
Cc: cccalcagno@gmail.com; janet.ricciuti@calcagnolaw.com; admin@calcagnolaw.com; ricciutij@comcast.net
Subject: RE: REGISTRANT'S REQUEST FOR SUFFICIENT RESPONSE TO DISCOVERY

Dear Mr. Davis,

We write in response to your June 11, 2013 email , which was sent to us at 11:41 pm. Legend timely served its truthful, and succinct written responses to your discovery requests on May 28, 2013.

As you have stipulated that the phrase "only LEGENDARY" is meant to "exclude other combinations of words including the mark Legendary (i.e. "LEGENDARY PICTURES", "LEGENDARY ENTERTAINMENT" etc.)," we withdraw the objection to vagueness as to that phrase. We believe that the answers to the interrogatories and document requests remain the same. We reserve our right as always to revise these answers should subsequent investigation determine that they may be amended.

You also complain that Legend has not yet produced documents in Response to Interrogatory No. 10. Please note that Legend Pictures LLC is assembling its documents for production and we will send them to you just as soon as possible consistent with Legends' obligations under the Federal Rules of Civil and Procedure and the Trademark Rules of Practice.

We trust this resolves this matter.

In the meantime, we note that while Legend has succinctly, truthfully, and honestly answered each of your discovery requests, with minimal objections, you have still failed to answer a single interrogatory or produce a single document, even though your responses were due well prior to Legend's. Please withdraw your objections so that the Board and we can obtain your responses to discovery.

Very truly yours,

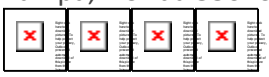
Carla Calcagno
Calcagno Law
2300 M Street,N.W.
Suite 800
Washington, D.C. 20037
Tel: 202 973 2880
Fax: 866 400 8464
carla.calcagno@calcagnolaw.com

From: Gloria W. [mailto:nevisbaby@hotmail.com]
Sent: Tuesday, June 11, 2013 11:41 PM
To: Carla Calcagno; Q D
Cc: cccalcagno@gmail.com; janet.ricciuti@calcagnolaw.com; admin@calcagnolaw.com; ricciutij@comcast.net
Subject: REGISTRANT'S REQUEST FOR SUFFICIENT RESPONSE TO DISCOVERY

Ms. Calcagno, Ms. Ricciuti,

Please see the attached documents.

Gloria Walters
Administrative Assistant to the Registrant
P.O.Box 47893
Tampa, Florida 33646



Carla Calcagno

From: Quentin Davis <tharilest@yahoo.com>
Sent: Saturday, April 06, 2013 11:00 AM
To: Carla Calcagno
Cc: Gloria W.
Subject: Re: Cancellation No. 92056158 Legend Pictures LLC v Quentin Dvais

Wednesday between 1 and 3 is fine. My number is still (941) 286-1018. I'm not sure why you received a message concerning a password as I did receive a voice message from you which prompted my initial call-back. I'll contact you on Wednesday just so there are no discrepancies.

-Quentin Davis

From: Carla Calcagno <carla.calcagno@calcagnolaw.com>
To: 'Quentin Davis' <tharilest@yahoo.com>
Cc: 'Gloria W.' <nevisbaby@hotmail.com>
Sent: Friday, April 5, 2013 11:06 AM
Subject: RE: Cancellation No. 92056158 Legend Pictures LLC v Quentin Dvais

Dear Mr. Davis

I propose we speak Wednesday April 10, 2013? I am free between 1pm and 3pm eastern time or between 6pm and 7pm eastern time.

If that works for you, please let me know a number at which I may reach you.

Regards,

Carla

Calcagno Law
2300 M Street,N.W.
Suite 800
Washington, D.C. 20037
Tel: 202 973 2880
Fax: 866 400 8464
carla.calcagno@calcagnolaw.com

From: Quentin Davis [mailto:tharilest@yahoo.com]
Sent: Friday, April 05, 2013 10:43 AM
To: Carla Calcagno
Cc: Gloria W.
Subject: Re: Cancellation No. 92056158 Legend Pictures LLC v Quentin Dvais

Ms. Calcagno,

Unfortunately we keep missing one another. I'm not available to speak today and I assume you are unavailable on weekends so I will contact you sometime early next week. Please inform me if you have a time preference.

-Quentin Davis

From: Carla Calcagno <carla.calcagno@calcagnolaw.com>
To: nevisbaby@hotmail.com
Cc: tharilest@yahoo.com
Sent: Thursday, April 4, 2013 2:44 PM
Subject: RE: Cancellation No. 92056158 Legend Pictures LLC v Quentin Dvais

Dear Mr. Davis:

Yesterday, I left you a telephone message asking you to call me back. I have now received your responsive voice mail of 12:30 today. First, thank you for calling me back.

Pursuant to your voice mail, I called you back at 941 286 1018. When I do so however, I receive a message asking me to enter my password.

The reason for my call is three-fold. First, and as indicated in my telephone message, I want to ensure that you received the below email, by which the Petitioner withdrew its former power of attorney and appointed me. Secondly, I wanted to ensure that you have no questions as to the discovery I sent you on March 14, 2013, by email and by first class mail. Third, I want to discuss the manner for exchanging documents in this case.

As I understand from your voice mail that you are busy, please let me know a good time for us to speak. I am free all day tomorrow. I am also free most of next week after Monday.

Regards,

Carla Calcagno

Calcagno Law
2300 M Street,N.W.
Suite 800
Washington, D.C. 20037
Tel: 202 973 2880
Fax: 866 400 8464
carla.calcagno@calcagnolaw.com

From: Carla Calcagno [mailto:carla.calcagno@calcagnolaw.com]
Sent: Thursday, March 07, 2013 2:29 PM
To: 'nevisbaby@hotmail.com'
Cc: 'tharilest@yahoo.com'
Subject: Cancellation No. 92056158 Legend Pictures LLC v Quentin Dvais

Dear Mr. Davis

Pursuant to your agreement with Petitioner as to the means of service, enclosed find your service copy of papers filed today with the United States Trademark Trial and Appeal Board. Henceforth, please serve all papers to my attention at both the following addresses:

Carla.calcagno@calcagnolaw.com and

cccalcagno@gmail.com

Please contact me immediately if you have any questions.

Very truly yours

Carla Calcagno

Calcagno Law
2300 M Street,N.W.
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Tel: 202 973 2880
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